Supreme Court of the United States

DOCKET NO. 80-844

In the Matter of:

PIONEER WAREHOUSE CORP.,

Bankrupt,

MARSHALL P. SAFIR,

Petitioner,

against

MARVIN CHUDNOFF, Trustee in Bankruptcy and SELIGMANN & HEIDEN, Creditors,

Respondents.

RESPONDENTS' BRIEF OPPOSING CERTIORARI

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Statement of the Case

Respondents submit this brief in opposition to the certiorari petition of Marshall P. Safir, the former principal stockholder and officer of the bankrupt, Pioneer Warehouse Corp.

In the interests of brevity, and in lieu of a statement of facts, this Court is respectfully referred to the comprehensive review of the facts by Bankruptcy Judge Cecelia Goetz, E.D.N.Y. set forth in her opinion adjudicating Pioneer Warehouse Corp. a bankrupt, 2 West's Bankruptcy Reporter 1 (1979), and in her opinion directing the Pioneer bankruptcy trustee to cease operating the business and to turn over the premises to the owners, reprinted in petitioner's Appendix at pages 9a-18a.

Question Presented

Does the petition of Marshall P. Safir raise any legal issue suitable for review by this Court under its Rule 19.

Argument

The first and third "Questions Presented" by petitioner are, in essence, challenges to findings of fact made by the Bankruptcy Court as to whether the Pioneer bankruptcy trustee had any interest in (a) the bankrupt's former leasehold and in (b) certain fixtures in its former premises. The Bankruptcy Court (Goetz, B.J.), the District Court (Nickerson, D.J.), and the Second Circuit Court of Appeals all concluded that the Pioneer bankruptcy trustee had no interest in either item (a) or item (b). While petitioner exercises some craftiness in attempting to recast these findings of fact into legal issues, it is readily apparent that such factual matters are not suitable for review by this Court. See Goetz opinion, reprinted in petitioner's Appendix, at pp. 9a, 11a-13a, and 14a-17a.

Petitioner's second "Question Presented" argues that the Bankruptcy Court should have applied the provisions of the Bankruptcy Reform Act of 1978 in determining whether or not to recognize the owner's termination of the bankrupt's former lease, despite the explicit provision in that Act, 11 U.S.C. § 403(a), that it shall not apply to bankruptcy cases commenced under the pre-existing bankruptcy act—that is, commenced prior to October 1, 1979.

Petitioner concedes that Pioneer's Chapter XI petition was first filed on March 23, 1978, and that the Chapter XI proceeding was converted into a straight bankruptcy by order dated June 21, 1979.

11 U.S.C. § 403(a) provides that:

> "A case commenced under the [pre-October 1, 1979] Bankruptcy Act, and all matters and proceedings in

> or relating to any such case, shall be conducted and determined under such Act as if this Act had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceedings as if the Act had not been enacted." [material in brackets added]

The lower courts have uniformly rejected any attempt to violate the clear mandate of the statute. See, for example, *Matter of Eaton Factors Co., Inc.*, 1 CBC 2d 286 (S.D.N.Y. Babbitt 1980); *Matter of Eagson Corp.*, 1 CBC 2d 309 (E.D.Pa. Goldhaber 1980); *Guardian Mortgage Investors* v. *Unofficial Noteholders, etc.*, 607 F.2d 1020, 1023-1024 at ftn. 6; *Matter of Parr*, 1 CBC 2d 228 (E.D.N.Y. Constantino 1979).

There is, of course, no question that under § 70(b) of the pre-existing Bankruptcy Act, the Court had explicit authority to recognize the bankruptcy termination clause pursuant to which the owners terminated the bankrupt's former lease. Petitioner does not argue to the contrary.

In view of the clarity of the statutory language, and the unanimity of the courts in rejecting attempts to circumvent its plain meaning, the conclusion that petitioner's present claim is frivolous is inescapable.

Petitioner also claims that he is a "victim of a confiscatory abuse of power" and of "bias".

In reviewing these allegedly "serious charges", this Court may wish to take into account the extensive record of this petitioner's personal avarice and abuse of the Bankruptcy Court as detailed by Bankruptcy Judge Goetz in her earlier opinion reported at 2 West's Bankruptcy Reporter 1, at pages 6-8.

The man who now claims "confiscatory abuse" is the same man who secretly used $6,000 of the bankrupt's

moneys to pay his country club dues, and who to this day has failed to repay the thousands upon thousands of dollars he took from the bankrupt's treasury which the Bankruptcy Court ordered him to repay personally on the ground that the moneys were spent for non-corporate purposes and without proper authorization.

Petitioner also argues, in so many words, that he never received his day in court or, at least, that he never received a fair hearing on the claims he now argues. Nothing could be further from the truth. There was a full evidentiary hearing on the record before Bankruptcy Judge Goetz, at which Safir himself testified at length. Her memorandum opinion of December 6, 1979—14 pages—is indicative of the care she gave the matter, and is typical of the care she lavished on the case throughout: opinion of January 26, 1979 restricting the debtor-in-possession—12 pages; opinion of March 22, 1979 disallowing Safir's brother-in-law's claim—20 pages; opinion of May 10, 1979 permitting Safir to change attorneys for the third time—8 pages; opinion of June 21, 1979 adjudicating Pioneer a bankrupt—40 pages; and opinion of June 9, 1980 rejecting the claim by the State Sales Tax Bureau—18 pages; and this is but a partial list of the unreported judicial opinions in this case.

CONCLUSION

The petition raises no legal issue suitable for review by this Court and should be denied in all respects.

Dated: New York, New York
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Respectfully submitted,

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